No. 93-1140 (H)

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

JAMES B. BEAM DISTILLING CO.,
Petitioner,

v.

STATE OF GEORGIA; JOE FRANK HARRIS, individually; ZELL MILLER, individually and as Governor of the State of Georgia; MARCUS E. COLLINS, individually and as Georgia State Revenue Commissioner; and CLAUDE L. VICKERS, individually and as Director of the Fiscal Division of the Department of Administrative Services,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to United States Supreme Court Rule 15.7, the Petitioner, James B. Beam Distilling Co. (hereinafter sometimes referred to as "Beam"), respectfully submits the within Supplemental Brief in the above-styled case (hereinafter sometimes referred to as the "*Beam* case" or "*Beam*").

IN LIGHT OF THIS COURT'S DECISION IN *REICH v. COLLINS*, THE COURT SHOULD GRANT BEAM'S PETITION FOR WRIT OF CERTIORARI; ISSUE AN ORDER OF SUMMARY DISPOSITION ON THE MERITS; AND REVERSE AND REMAND *BEAM* FOR THE PROVISION OF MEANINGFUL BACKWARD-LOOKING RELIEF CONSISTENT WITH DUE PROCESS AND THE DECISIONS OF THIS COURT.

On December 6, 1994, this Court issued its unanimous decision in *Reich v. Collins*, —— U.S. ——, —— S. Ct. ——, 1994 WL 675214 (Docket No. 93-908) (*"Reich"*), in which the Court reversed the decision of the Georgia Supreme Court and remanded the case *"for the provision of meaningful backward-looking relief . . . consistent with due process and our McKesson line of cases." Id.* at WL p. 5 (final paragraph) (quoting *Harper v. Virginia Dep't of Taxation*, 590 U.S. ——, 113 S. Ct. 2510 (1993), and *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Dep't of Business Regulation of Florida*, 496 U.S. 18, 110 S. Ct. 2238 (1990); citing *Carpenter v. Shaw*, 280 U.S. 363, 50 S. Ct. 121 (1930); citations and quotation marks omitted; emphasis supplied). The Court has scheduled *Beam* for conference on December 9, 1994. The Court may have been holding the Petition in *Beam* until its decision in *Reich*, for the two cases are companion cases involving the same issues against the same respondents.

Beam requests that this Court grant it the same relief that the Court granted in *Reich*. The Georgia Supreme Court issued its latest decisions in *Reich* and *Beam* on the same day; based its latest opinions in the two cases in very large part on the same erroneous grounds; relied in *Reich* on its holding in *Beam*; and cross-referenced each case, one with the other. Using the same arguments and the same post hoc manipulation of the same taxpayer remedies (namely, Georgia's Tax Refund Statute, O.C.G.A. § 48-2-35)—in what this Court has described as an unfair "bait and switch," *Reich*, at WL p. 3—the State

of Georgia deprived state taxpayers in *Reich* and in *Beam* of their due process rights to a clear and certain remedy for the exaction of unconstitutional taxes and, further, of their due process rights to meaningful, backward looking relief, that is, to a recovery of the unconstitutionally collected taxes. *See id.* at WL p. 2 (" '[A] denial by a state court of a recovery of taxes exacted in violation of the laws or Constitution of the United States by compulsion is itself in contravention of the Fourteenth Amendment,' . . . the sovereign immunity States traditionally enjoy in their own courts notwithstanding." (quoting *Carpenter*, 280 U.S. at 369)).

In its earlier briefing in the instant case as well as in its *amicus curiae* brief in *Reich*, Beam has shown this Court that its case is indistinguishable from *Reich*. If this Court merely vacates the Georgia Supreme Court decision in *Beam* and remands the case without direction, the history of these cases has shown that the Respondents and the Georgia courts will use any remedial discretion this Court leaves them, or appears to leave them, to continue to manipulate the relief to which Beam is entitled and to prolong this litigation. That is precisely what happened in *Reich* when *Reich* was first remanded by this Court to the Georgia Supreme Court in light of *Harper v. Virginia*.

For these reasons and to put an end to the solid decade Beam has spent in litigation over this matter, Beam respectfully suggests that the Court dispose of *Beam* in the same way it disposed of *Reich*. The Court should grant Beam's Petition; should reverse the Georgia Supreme Court in a summary disposition on the merits, by a per curiam opinion or otherwise; and should remand *Beam*, not for mere reconsideration, but expressly and specifically for the same relief as granted in *Reich*: *"for the provision of meaningful backward-looking relief . . . consistent with due process and our McKesson line of cases."* *Id.* at WL p. 5 (emphasis supplied). *See also* United States Su-

preme Court Rule 16.1 ("The order may be a summary disposition on the merits."); *Von Cleef v. New Jersey*, 395 U.S. 814, 89 S. Ct. 2051 (1969); *Keney v. New York*, 388 U.S. 440, 87 S. Ct. 2091 (1967); *Allison v. United States*, 386 U.S. 13, 87 S. Ct. 874 (1967) (case remanded with instructions); *General Atomic Co. v. Felter*, 436 U.S. 493, 98 S. Ct. 1939, 1941 (1978) ("[A] litigant who . . . has obtained judgment in this Court after a lengthy process of litigation, involving several layers of courts, should not be required to go through that entire process again to obtain execution of the judgment of this Court."). After the Court's unanimous decisions in *Reich* and *McKesson*, the relief to which Beam is entitled is clear. Finally, the Court's treatment of the *Reich* case obviates the need for oral argument or further briefing in *Beam*.

CONCLUSION

For all the foregoing reasons and all the reasons stated in Beam's earlier briefing in this case and its *amicus curiae* brief in *Reich*, Beam respectfully requests that and submits that the Court should grant Beam's Petition for Writ of Certiorari, issue an order of summary disposition on the merits, and reverse and remand *Beam* to the Georgia Supreme Court with instructions requiring the provision of meaningful backward-looking relief consistent with due process and the Court's *McKesson*, *Harper*, and *Reich* line of cases.

Respectfully submitted,

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